

**DRAFT**

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION**

**I.D.# 11404  
RESOLUTION G-3468  
July 12, 2012**

**R E S O L U T I O N**

**Resolution G-3468. Southern California Gas Company (SoCalGas) requests approval of a Memorandum in Lieu of Contract (MILC) between the Utility System Operator and the Gas Acquisition Department for Services to Maintain Southern System Reliability Pursuant to Decision (D.) 07-12-019.**

**PROPOSED OUTCOME: This Resolution approves the request.**

**ESTIMATED COST: Unknown**

**By Advice Letter 4291 filed on November 3, 2011.**

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**SUMMARY**

SoCalGas filed Advice Letter (AL) 4291 to request approval of a Memorandum in Lieu of Contract (MILC) between the SoCalGas System Operator and the SoCalGas Gas Acquisition Department to support SoCalGas' minimum flow requirements on its Southern System. Under the MILC, the Gas Acquisition Department (GA) will commit to injecting gas supplies up to core demand. In exchange for taking on this obligation, GA will not share the System Reliability Memorandum Account (SRMA) cost. This resolution approves the MILC subject to the following modifications:

1. Under the Non-performance provision of the MILC, Gas Acquisition will be subject to a proportional allocation of any System Reliability Memorandum Account (SRMA) costs whenever it does not deliver the required quantities.
2. The system reliability costs associated with serving Core Demand in excess of the maximum delivery quantities defined in the MILC will be shared at a rate of 41.9%.

Further, approval of the use of a MILC between Gas Acquisition and the System Operator is limited to this specific agreement, as modified.

The resolution also requires that SoCalGas include, as part of its Annual Compliance Report (ACR) on Utility System Operator's Southern System Reliability Purchases and Sales, a review and evaluation of the effectiveness of the transfer of responsibility for Southern System reliability from Gas Acquisition to the System Operator.

The Southern California Generation Coalition (SCGC) and Southern California Edison (SCE) filed timely protests to AL 4291. These protests are denied in large part. The Indicated Producers filed a late protest. Its protest is denied.

## **BACKGROUND**

**D.07-12-019 approved transfer of responsibility for managing minimum flow requirements for system reliability from the SoCalGas Gas Acquisition Department (GA) to the Utility System Operator (SO).** In A.06-08-026, SoCalGas, San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company (SCE) jointly requested approval to implement a range of revisions to the natural gas operations and service offerings of SoCalGas and SDG&E. In D.07-12-019, the Commission granted in part, and denied in part, the joint application.

One of the Applicant's requested provisions, approved in D.07-12-019, was the transfer of the responsibility for managing minimum flow requirements for system reliability from GA to the SO.<sup>1</sup> SoCalGas needs a certain minimum amount (which can vary depending upon conditions) of flowing supplies on its Southern System to operate effectively. GA had previously assured such flowing supplies, using core customer assets. When GA needed to purchase additional spot supplies to meet minimum flow requirements at Ehrenberg, beyond 355 million cubic feet per day (MMcfd), its incremental costs to do so were recorded

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<sup>1</sup> D.07-12-019, Ordering Paragraph 15.

in a memorandum account. The allocation of the costs in that memorandum account was determined in the SoCalGas Biennial Cost Allocation Proceeding (BCAP). In response to the SoCalGas/SDG&E/SCE Application to transfer this responsibility from GA, D.07-12-019 directed the SO to take over the responsibility for managing these minimum flows as of April 1, 2009.

**D.07-12-019 (the Omnibus Decision) further granted Applicants' proposal for a variety of System Operator tools.** D.07-12-019 granted Applicants' proposal for the following System Operator tools:

- the ability of the SO to buy and sell gas on a spot basis, as needed, to maintain system reliability;
- authority to conduct requests for offers (RFO) or an open season process consistent with the SO needs; and
- authority to approve an expedited Advice Letter approval process for contracts that result from a RFO or open season process.<sup>2</sup>

Subsequently, in response to a Petition for Modification filed by the Division of Ratepayer Advocates (DRA) and the Southern California Generation Coalition (SCGC), the Commission issued D.10-05-005, which replaced the 10-day protest period allowed for expedited advice letters with the regular 20-day protest period for these advice letters.

The Omnibus Decision provided that Applicant's request for approval of additional SO tools on an interim basis be made by regular advice letter and that further consideration of the process for review and approval of additional System Operator tools shall be made in the next BCAP.<sup>3</sup>

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<sup>2</sup> D.07-12-019, Ordering Paragraph 16.

<sup>3</sup> SoCalGas and SDG&E filed A.08-002-001 requesting authority to revise their rates effective January 1, 2009 in their Biennial Cost Allocation Proceeding. That BCAP (A.08-02-001) resulted in D. 09-11-006 wherein, the Commission adopted a Settlement Agreement of parties. Among other provisions, the adopted Settlement Agreement changed the term of the Cost Allocation Proceeding filing to every 3 years – a Triennial Cost Allocation Proceeding (TCAP).

The SO commenced an RFO on July 15, 2011 through a posting on Envoy (SoCalGas' Electronic Bulletin Board). It solicited proposals to assist in managing its minimum flow requirement to SoCalGas' Southern System delivery points, defined as either the El Paso SoCal Ehrenberg delivery point or the TGN Otay Mesa delivery point for system reliability. The RFO was not binding on SoCalGas, and SoCalGas reserved the right to reject any or all offers submitted in response to this RFO.

In AL 4291, SoCalGas described neither the RFO solicitation nor the content of the bids made in response to the RFO, other than that of GA. According to SoCalGas, the most beneficial of the offers made in response to that request was made by GA. SoCalGas requests Commission approval of the agreement between the SO and GA, which SoCalGas says is a "Memorandum In Lieu of Contract", or MILC.

### **The Proposal from GA**

SoCalGas states that the GA bid proposes to use its various Backbone Transmission Service Contracts and other assets available to it to make minimum deliveries on a daily basis into the Southern System as follows:

**Contract Period (Term):** December 1, 2011 through October 31, 2012

### **Quantity:**

- GA will deliver on each gas flow day (Gas Day) from December 1, 2011 through March 31, 2012, the lower of either 50% of the Southern System Minimum Flow Requirement that is posted by SoCalGas Control at 6:00 am on the SoCalGas Envoy bulletin board for Cycle 1 of that Gas Day or 360 thousand dekatherms (Mdth).
- GA will deliver on each gas flow day from April 1, 2012 through October 31, 2012, the lower of either 35% of the Southern System Minimum Flow Requirement that is posted by SoCalGas' Gas Control at 6:00 am on the SoCalGas Envoy bulletin board for Cycle 1 of that Gas Day or 260 Mdth.

**Delivery Point:** All deliveries will be made into the SoCalGas Citygate at GA's election from any of the following points: the El Paso Natural Gas Pipeline

Blythe delivery point, the North Baja Pipeline Blythe delivery point, or at the TGN Pipeline Otay Mesa delivery point.

**Fee:** As compensation for providing these Southern System support services, GA's bundled core customers will receive a fee equal to the amount they are implicitly charged for Southern System support costs incurred by the SO during the Term. (Bundled core customers are those that take procurement service from SoCalGas. Core aggregation customers take procurement service from a non-utility supplier.)

This fee will be calculated after the end of the Term, once Southern System support costs during the Term are allocated to bundled core customers (Bundled Core Allocation). The fee amount will be a credit to the Purchased Gas Account (PGA), and a corresponding debit to the System Reliability Memorandum Account (SRMA) equal to the Bundled Core Allocation.

All costs incurred by the SO to provide minimum flows on the Southern System are recorded in the SRMA. SRMA costs are allocated to customer classes based on an Equal Cents per Them basis. SoCaGas states that this method results in the following current allocation:

Combined bundled Core:	41.9%
Combined	
Core Aggregation Transport:	1.4%
Combined Noncore:	<u>56.7%</u>
	100 %

**Because GA would have met its share of the Southern System minimum flow requirement before any spot supplies are purchased by the SO, SoCalGas states that the net result of the SRMA allocation and credit of the fee to the PGA is bundled core customers not paying any of the SO costs of managing Southern System flows.** The GA fee will be passed on entirely to bundled core customers and will not be included in the Gas Cost Incentive Mechanism (GCIM). As a result of the credit to SRMA, noncore customers will then be charged with all actually incurred Southern System Reliability Purchase Costs, beyond the fee paid to GA. SoCalGas provides the following example:

Assuming that the SO actually incurs a net purchase cost of \$3 million, the GA fee would be calculated as:

$$\text{GA Fee} = 0.419 * \$3 \text{ million} / (1 - 0.419) = \$2.17 \text{ million}$$

This amount would be added to the \$3 million in net purchase costs by the SO, making the total SRMA costs \$5.17 million. The bundled core allocation of SRMA costs would be \$2.17 million, but this amount would be offset by a \$2.17 million credit to the PGA, so bundled core customers will not pay SRMA costs.

### **SoCalGas Justification of the GA MILC**

The Southern System minimum flow requirement is equal to Southern System demand minus any system ability to flow Northern supply down to the Southern System. SoCalGas states that its analysis indicates that core demand represents approximately 50% of winter demand in the Southern System in the November – March period and 35% of this summer demand in the April – October period. SoCalGas cites the February 2011 weather conditions as an example of situation where spot supplies can be extremely expensive for short periods of time. By guaranteeing this minimum amount of flowing supply on the Southern System, SoCalGas states that GA will be reducing the amount of incremental supply that the SO will need to purchase on the spot market.

SoCalGas expects that the dollars charged to the SRMA account will likely be reduced as a result of a lower volume of purchases by the Utility System Operator. If the MILC is approved, the bundled core will have met its share of the Southern System minimum flow requirement before any spot supplies are purchased by the SO. SoCalGas states that any costs incurred over the contract period will be allocated solely to noncore and core aggregation, not bundled core, customers.

SoCalGas states that it expects the Southern System minimum flow requirement to remain below 720 Mdth/day (i.e. 360 Mdth/day divided by 0.50) during the winter and below 743 Mdth/day (i.e. 260 Mdth/day divided by 0.355) during the summer. GA has 365 Mdth/day of firm El Paso Capacity to SoCal Ehrenberg until September of 2012, at which time its rights drop to 264 Mdth/day. SoCalGas states that this is why the MILC caps the GA minimum delivery obligation at 360 Mdth/day from December – March, and 260 Mdth/day from

April – October. GA will be able to serve its share of the Southern System requirement by relying on firm pipeline capacity and firm base load supplies.

SoCalGas concludes its justification for the MILC by stating that the SO would be “managing the Southern System minimum supplies by having GA assume responsibility for the flow requirements of the bundled core load.”<sup>4</sup> GA would use its supplies and capacity to meet that responsibility, and would assume all cost related to that. The SO would continue to be responsible for noncore and core aggregation loads and would buy gas supplies on the spot market or use other pre-approved Commission tools to meet that part of the responsibility. Noncore and core aggregation customers would pay for these SO costs through the SRMA account.

## **NOTICE**

Notice of AL 4291 was made by publication in the Commission’s Daily Calendar. SoCalGas states that a copy of the Advice Letter was sent to the parties listed on Attachment A of the AL, which includes parties in A.06-08-026, the Omnibus proceeding.

## **PROTESTS**

**SoCalGas AL 4291 was timely protested by the Southern California Generation Coalition (SCGC) on November 22, 2011 and Southern California Edison (SCE) on November 23, 2011. The Indicated Producers (IP) submitted a late-filed protest on December 1, 2011.**

### **SCGC’s Protest**

**SCGC states that the Commission should reject SoCalGas AL 4291. SCGC protests AL 4291 because the proposal (1) violates the Biennial Cost Allocation Proceeding (BCAP) settlement on allocating SRMA balances as approved in**

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<sup>4</sup> SoCalGas Advice Letter 4291, filed November 3, 2011.

D. 09-11-006; (2) fails to obligate the GA Department to deliver gas to meet the burden that the bundled core customers impose on the Southern System; (3) imposes only a “best effort” obligation on the GA Department; (4) is supported only by speculation; (5) is inconsistent with the request for offers that SoCalGas claims to be the genesis of the MILC; and (6) was submitted tardily.<sup>5</sup>

First, SCGC states that the proposal in AL 4291 violates the settlement agreement in the last SoCalGas BCAP that was approved in D.09-11-006. In that settlement agreement, SoCalGas agreed, along with other parties, that amounts accumulated in the SoCalGas SRMA shall be allocated on an Equal Cents Per Therm (ECPT) basis among customer classes.<sup>6</sup> The MILC provides that “as compensation for providing these Southern System support services, GA’s bundled core customers will receive a fee equal to the amount they are charged for Southern System support costs incurred by the SO during the Term<sup>7</sup> (Currently 41.9% of SRMA costs are allocated to bundled core customers.)<sup>8</sup> This provision of the MILC would unilaterally eliminate any allocation of SRMA balances to the bundled core, directly violating the explicit provision for an ECPT allocation among the customer classes in the BCAP settlement.

SCGC states that if SoCalGas wants to change the settlement agreement, it should bring parties together and obtain their concurrence to a modification. SCGC demonstrates that the settlement parties have already agreed to change one provision of the settlement agreement, (the deadline for filing the currently pending SoCalGas TCAP Application A.11-11-002) was changed from September 1, 2011 to November 1, 2011.<sup>9</sup> SCGC states that alternatively, SoCalGas could

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<sup>5</sup> November 22, 2011 Protest of SCGC to SoCalGas AL 4291.

<sup>6</sup> D.09-11-006, Appendix A, p.12.

<sup>7</sup> Advice Letter 4291, Attachment C., p.2 (MILC).

<sup>8</sup> Advice Letter 4291, Attachment C., F/N 2, p.2.

<sup>9</sup> D.11-07-052 (SCGC’s Protest erroneously cites D.11-02-052, a typo, as the correct month – July – is cited.)



propose a modification of the current effective provision for allocating SRMA balances in the currently pending TCAP (although there are no such proposals in the application or testimony as filed on November 1, 2011 in A.11-11-002.)

Second, SCGC protests that the MILC does not guarantee that the core will meet its minimum flow requirement. The MILC obligates GA to provide a maximum delivery obligation of 360 Mdth/d during the winter and 260 Mdth/d during the summer. SCGC states that this may be enough to cover the portion of the Southern System minimum flow requirement associated with service to the bundled core under normal circumstances. However, under more extreme circumstances it may not be enough. SCGC asserts that SoCalGas has failed to provide any data showing that there would not be periods during which bundled core winter demand on the Southern System exceeds 360 Mdth/d. In these events, the GA obligation to provide up to 360 Mdth/d would not result in the bundled core meeting its share of the Southern System minimum flow requirements.

Third, SCGC points out that the MILC does not fully commit GA to deliver the quantities provided for in the MILC. The MILC contains a “non-performance” clause permitting GA to request a “deviation” from the SO. Consenting to the deviation would allow GA to deliver less than the quantities identified in the MILC without bearing its share of the cost. SCGC speculates that because the SoCalGas SO and GA are within the same company, it is not unreasonable to expect that the SO would have a tendency to consent to GA requests for deviations.

Fourth, SCGC notes that SoCalGas expects that the dollars charged to the SRMA account will be reduced as a result of a lower volume of purchases by the SO. However, SoCal Gas provides no factual basis for its expectation.

Fifth, SCGC argues that the service that GA would provide under the MILC is not what was sought when the SO posted its RFO. The SO sought “call options” for a minimum of 10,000 Dth/d to a maximum of 500,000 Dth/d for next-day or intraday deliveries to the Southern System when called upon. Furthermore, the RFO specified that service offerings must provide for assurances of incremental

gas delivered from a supply basin. GA would use El Paso pipeline capacity for which it has already contracted, to deliver gas as it normally does.

Lastly, SCGC argues that SoCalGas was tardy in submitting the MILC for approval. The RFO required for offers to be submitted by August 1, 2011 and for the advice letter seeking approval of minimum flow agreements to be submitted by September 2, 2011. SoCalGas submitted AL 4291 on November 3, 2011, more than two months late, without explanation.

### **Southern California Edison's Response**

SCE submitted what it refers to as a "response" to SoCalGas AL 4291, but which contains arguments against the MILC similar to those of a protest. SCE states that it is generally supportive of the underlying principles of the MILC, but would require certain changes to both the MILC and the advice letter before it could support SoCalGas' request.

SCE states that the Commission issued D.09-11-006<sup>10</sup> approving in part, a settlement to implement a range of provisions pertaining to the natural gas operations and service offerings of SoCalGas and SDG&E related to core gas customer operations, unbundled storage, and expansion of storage capacities. SCE's comments state that D.09-11-006 include a settlement provision that the costs incurred by the SO to provide minimum flows on the Southern System be recorded in the SRMA and paid in the proportions of 41.9 % paid by the combined bundled core, 1.4% paid by the combined Core Aggregation Transporters (CATS), and 56.7% paid by the combined noncore customers.

Edison states that AL 4291 asks the Commission for approval of an agreement which would reimburse the combined bundled core for their agreed upon 41.9% in exchange for their bringing in 50% of the Southern System Minimum Flow Requirement between December 1, 2011 and March 31, 2012 (up to a maximum

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<sup>10</sup> In its protest, SCE erroneously cited D.07-12-019. However in reply to an Energy Division telephone call of January 10, 2012 asking whether SCE meant to cite D.09-11-006, SCE replied affirmatively.

of 360 Mdth/d) and 35% of the Southern System Minimum Flow Requirement between April 1, 2012 and October 31, 2012 (up to a maximum of 260 Mdth). Edison states that it would consider offering its support of the MILC, but only if certain changes were made which would require the approval of all of the parties to the settlement, not just SCE: (1) SCE believes the MILC is reasonable only to the degree that GA brings gas into the Southern System that is in excess of its maximum daily delivery for the month in each of the past three years. The credit would be calculated based upon the costs per thousand decatherms (dth) paid by the SO for bringing in gas and the incremental amount of gas (over the historic peak day amount) brought in by GA. (2) GA should make its historical deliveries at the indicated receipt points available to customers in the interest of transparency for a period of three years.<sup>11</sup> (3) SCE believes the MILC is equitable to the degree that it results in reductions in costs to each customer class commensurate with the increase in costs that result from the payments/credits under the agreement. (4) Lastly, SCE proposes that the settlement agreement adopted in D.09-11-006 be changed so that customers whose gas from the Southern System is curtailed on a given day should be excused from any SRMA costs for that day, since by nature of the curtailment, they have already eliminated their own flow requirements on the Southern System.

### **The Indicated Producers Protest<sup>12</sup>**

On December 1, 2011, the Indicated Producers (IP) late filed a protest to AL 4291. The protest raises concerns that stem from SoCalGas' then recent notice of Southern System receipt point backbone transmission service (BTS) discounts. The discount notice was provided after the date protests to AL 4291 were due. As described by IP in its protest, the BTS discounts have impacted and will further impact competition and customer costs. On November 28, 2011, during

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<sup>11</sup> The delivery points of El Paso Natural Gas Pipeline at Blythe, the North Baja Pipeline at Blythe, and the TGN Pipeline at Otay Mesa.

<sup>12</sup> For purposes of this protest, the Indicated Producers is an ad hoc coalition that includes BP Energy Company, BP America Inc. (including Atlantic Richfield Company), Chevron U.S.A. Inc., and Occidental Energy Marketing Inc.

the middle of bidweek, SoCalGas discounted interruptible BTS capacity at all Southern System receipt points from 10.995 cents/dth to 2 cents/dth. The discounts were available from December 1, 2011 through December 31, 2011, at the North Baja/Blythe, El Paso/Ehrenberg, and TGN/Otay Mesa receipt points. IP protests that it is unclear why SoCalGas made these discounts available in the middle of bidweek, rather than before bidweek when all customers could take advantage of them. According to IP, by the time the announcement was made, most customers had made arrangements for the month of December, and could not take full advantage of the discount. IP states that the timing had a competitive impact and that SoCalGas could have encouraged more Southern System flows if the discounts were available before bidweek started.

IP states that these discounts had a material impact on market prices. Because market indices are an average of bidweek prices, the drastic discount offered in the middle of bidweek materially lowered the spread between the SoCal Border and Citygate indices. IP reasons that if either GA or any SoCalGas affiliate had advance knowledge of the discount, the opportunity existed for profit taking.

IP questions whether the discounts had any relationship to the arrangement that SoCalGas seeks to have with GA, because they were effective on December 1, 2011, the same day the GA contract was scheduled to begin. IP speculates that if GA had firm BTS capacity rights to flow supplies to the Southern System points, it could use those rights to deliver supplies to a different point to take advantage of the newly announced 2 cents/dth discount. IP states that while the value of the discounts is questionable for other customers, it can clearly benefit GA, as it is obligated to bring in up to 360 Mdth/day during the discount period.

IP summarizes its protest by arguing that the mid-bidweek discount had significant impacts on the market and competition. IP speculates that the discount also likely increased the value of GA's contract to the core, while not providing any benefit to other customers.

IP also states that it agrees with SCGC and SCE on aspects of their protests.

## **RESPONSE TO PROTESTS**

**SoCalGas responded to the protests of SCGC and SCE on December 2, 2011 and to the protest of IP on December 8, 2011.**

SoCalGas structures its response first to what it classifies as the substantive assertions by SCGC and SCE; secondly, to the claims of SCGC regarding procedural impropriety. Lastly SoCalGas addresses SCE's request for curtailment-related relief.

SoCalGas states that both SCGC's and SCE's arguments that GA will be bringing substantial supplies into the Southern System in the absence of the proposed agreement, are incorrect. SoCalGas says that since the SO took over minimum flow responsibility in April, 2009, GA has flowed substantial volumes into the Southern System for a variety of reasons, including the closure of the Topock receipt point for maintenance and preexisting transportation agreements with El Paso. However, SoCalGas notes that Topock has reopened, and SoCalGas' relevant contracts with El Paso will be expiring in the near future. SoCalGas cites D.07-12-019 wherein bundled core customers are no longer responsible for bringing gas into the Southern System. According to SoCalGas, if it makes economic sense for GA to deliver gas at other locations, it has the ability to do so. SoCalGas states that it is wrong for SCGC and SCE to assume that past Southern System deliveries by GA establish the future status quo. Arguments that assume future uneconomic deliveries by GA to the Southern System, according to SoCalGas, are just a call for continued subsidies of the noncore by the core.

SoCalGas states that it is frequently not in the economic interest of any shipper, including GA, to deliver supplies into the Southern System, even when a shipper has the pipeline capacity to do so. GA will continue to deliver supplies into the Southern System only when it is economical to do so from the perspective of core customers. SoCalGas states that rejecting AL 4291 would create a strong disincentive for GA to re-contract for the expiring El Paso System.

SoCalGas rejects SCE's proposal that core customers only receive credit when their Southern System deliveries exceed the core's maximum daily delivery on any day in that month in any of the past three years. SCE's proposal would

penalize core customers for past benefits they provided to the system. This would almost certainly guarantee that bundled core customers would continue to subsidize noncore customers with their deliveries into the Southern System without receiving any compensation for doing so.

SoCalGas dismisses SCGC's complaint that there may be periods during which bundled core winter demand exceeds the 360 Mdth/d delivery commitment by stating that during the period for which GA has collected data, (January 2010 through March 2011) this has not occurred.

In response to SCGC's concern that GA's obligation under the Agreement is not absolute because of a non-performance clause in the agreement that would allow GA to request a temporary deviation, SoCalGas states that this is a common force majeure-type provision standard in many supply contracts and SCGC's expectation that the SO and GA will collude with respect to this provision is unfounded.

SoCalGas argues that the Agreement would provide positive benefits for all customers because bundled core customers will not be required to pay for purchases made by the SO to make up for noncore and CAT supply shortfalls on the Southern System and those customers will reap the benefits of the additional core customer flows on the Southern System. Furthermore, SoCalGas says that because the agreement only lasts through October 31, 2012, it does not lock any of the parties into a long-term relationship.

SoCalGas states that SCGC's claims of procedural impropriety are without merit, and disagrees with SCGC's argument that the Agreement violates the 2009 BCAP Settlement Agreement adopted in D.09-11-006 which allocated SRMA costs on an ECPT basis among customer classes. SoCalGas states that it is not proposing to change that allocation, it is proposing to provide Southern System support services for a price, and that price just happens to be the SRMA charges that core customers would otherwise pay during the term of the agreement.

SoCalGas argues that had it priced its support services at \$5 million or \$20 million, or some other fixed amount, arguments over whether a specific fixed price was too high or too low seemed inevitable.

SoCalGas dismisses SCGC's objection that the support services GA is proposing are not the same services asked for in the RFO. SoCalGas states that SCGC is correct. However, there is no requirement that SoCalGas only look at RFO responses that fit within the suggested RFO criteria.

SCGC's final procedural argument is that SoCalGas was "tardy" in submitting AL 4291 because the SO RFO Envoy posting stated that the AL was going to be submitted by September 2, 2011. SoCalGas argues that the timing of an advice filing seeking approval of a SO tool is a matter within SoCalGas' discretion and control. SoCalGas states that it took longer to evaluate this particular proposal than originally anticipated because of the unusual and novel nature of the proposal. However, according to SoCalGas, this delay does not render its proposal procedurally defective.

Lastly, SoCalGas deems inappropriate SCE's proposal that the Commission consider relieving customers whose gas is involuntarily curtailed on a given day from responsibility for costs associated with the SRMA. SoCalGas states that General Order (GO) 96-B provides interested parties with the right to file protests to advice filings and establishes the permissible grounds for protest. However, SoCalGas stated that GO 96-B does not give interested parties the right to make their own separate and distinct requests for relief in response to advice filings.

SoCalGas notes that SCE acknowledges in its protest that the relief from SRMA costs during curtailment is contrary to the BCAP Settlement Agreement and would require the agreement of all parties to the settlement. SoCalGas states that SCE fails to acknowledge that the BCAP Settlement was adopted by the Commission in D.09-11-006 and what SCE is proposing is a substantive change which cannot be accomplished through a suggestion in a response to an advice filing. SoCalGas suggests that SCE's proposal raises issues that cannot be resolved without further testimony or evidentiary input.

**On December 8, 2011, SoCalGas responded to the late-filed protest of IP stating that the concerns expressed by IP are “untimely, unfounded, and unpersuasive.”<sup>13</sup>** SoCalGas contends that IP’s reiteration of points made by SCGC and SCE in their timely protests should be given no weight because there is no substantive or procedural reason to let interested parties file late protests saying “we agree” to timely protests of other parties.

SoCalGas states that IP’s complaint that BTS discounts were offered during, rather than before bidweek, is misplaced. SoCalGas states that AL 4291 has nothing to do with the BTS discounts offered by SoCalGas for Southern System receipt points. According to SoCalGas, neither GA nor any affiliates had advance knowledge of the discount and found out about it at the same time as the rest of the market. SoCalGas says that the SO was concerned that customers on the Southern System would not deliver enough gas if market conditions did not encourage such flows, and the SO independently implemented the BTS discounts. SoCalGas states that GA was not consulted about the discounts and GA cannot dictate whether or when the SO may offer the discounts again. The discounts were available to anyone who flowed interruptible supplies on the Southern System.

## **DISCUSSION**

**The Commission has reviewed AL 4291, the protests and the replies to the protests and approves, subject to modification, the MILC between the SO and GA and AL 4291.**

**The method by which the MILC determines the cost allocated to Combined Bundled Core complies with the technical requirements of D.09-11-006. It is inaccurate to state that core customers pay no SRMA costs.** Gas Acquisition has no requirement that it make flows on the Southern System and at times there is an economic disincentive to do so. Under the proposed MILC, demand would be met, at least in part, by core assets (up to the stated maximums) rather than

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<sup>13</sup> SoCalGas December 8, 2011 Response to late-filed protest of IP, p. 2.



through spot purchases. It is reasonable to expect that, without the MILC, GA would and should, if uneconomic, decline to use core assets to make deliveries into the southern system. With the MILC, GA will be required to make deliveries which on average exceed its allocated 41.9% share of costs. Under the MILC, Gas Acquisition will assume the risk of and be required to make uneconomic deliveries, and should receive a fee for this service on behalf of bundled core customers. The fee proposed for assuming this risk and making the deliveries equals its allocated share of SRMA. The fact that Core customers will not pay any of the SRMA costs, does not mean they do not take responsibility for the system reliability costs. Their share of the cost is reflected in the costs related to uneconomic deliveries. As demonstrated in the Advice Letter, the calculation of the fee assures that it will assume no less than its allocated SRMA costs.

**The term of the proposed MILC coincides with the shutdown of the San Onofre Nuclear Generation Station (SONGs), which heightens the need for assuring southern system reliability at this time.** The SONGS shutdown likely results in increased natural gas demand, including in the SoCalGas Southern System, and could exacerbate southern system reliability problems. It is possible that during this term southern system requirements will increase even more so than in the past. Upon Energy Division request, SoCal Gas provided an estimate and supporting data indicating that the shutdown of the SONGs led to an 81 Mdt/d increase in Southern System minimum flow requirements for the months of February and March, 2012.

**The Non-performance provision needs to be changed making GA responsible for a proportionate allocation of charges to the SRMA whenever it fails to meet its delivery requirements on days when SRMA net costs are incurred.**

The provision as proposed allows the SO to consent to a request from GA for a deviation permitting it to deliver less than is otherwise required. If the SO consents to the deviation GA would not have to pay for its share of SRMA costs for the short delivery. The SCGC protest speculates that as part of the same overall company the System Operator would be inclined to consent to rather than deny a request for a deviation from the GA.

The fee that Gas Acquisition charges under the MILC is effectively a charge for GA assuming the economic risk of, and actually making the required deliveries using core assets. The value of the MILC rests on providing those supplies under essentially all circumstances. Conversely, the reasonableness of the charge is questionable if, in some circumstances, GA can be excused from the cost of non-performance. Given this, SoCal Gas' response to the protest that it would have to justify the deviation when it seeks to recover the SRMA costs lacks merit.

The non-performance provision must be modified to require that, if, for any reason, GA does not deliver the quantity required by the MILC, GA will be subject to a proportional allocation of any SRMA costs that are recorded for any such Gas Day, where GA's portion of the costs will be equal to the GA shortfall divided by the total amount of supply purchased by the System Operator for that Gas Day times 41.9%, up to a maximum of 41.9%.

**The MILC must be modified to require that GA pay its proportional share, i.e. 41.9%, of costs associated with core demand that exceeds the daily maximums of 360 mdth. (December through March) and 260 mdth. (April through October). This provision will take effect on days when SRMA net costs are incurred.** A key element of the SoCalGas proposal is that it will provide Core's portion of the Southern System minimum flow requirement. The maximums are set based on this premise, and AL 4291 states "If this MILC is approved, the bundled core will have met its share of the Southern System minimum flow requirement *before* (emphasis added) any spot supplies are purchased by the Utility System Operator."<sup>14</sup> SCGC protested that despite SoCal Gas' assertion, there is no guarantee that under "extreme circumstances" core demand will not exceed the maximum. SoCalGas, in response to the protest notes that "there is a chance that on certain cold winter days bundled core demand on the Southern System could exceed 360 Mdth/d, but the bundled core's share of the Southern System minimum has not exceeded 360 MDth over the period for which GA has collected data, i.e., January 2010 through March 2011." However, data provided in response to a Commission request covering the period December 2009

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<sup>14</sup> Advice Letter 4291, page 3.

through March of 2012 showed instances where core demand exceeded the 360 mdth/d.

In response to the protest, SoCalGas asserted that over the period of the proposed MILC, it is highly likely that GA will deliver more in aggregate than core's share of the cost. The Commission's analysis of data from December 2009 through March of 2012 confirms that had the MILC been in place the deliveries would have exceeded core's demand. However, the argument that the deliveries in aggregate will exceed core demand does not confirm the assertion that the bundled core's share of the minimum flow requirement will be met *before* any spot supplies are purchased by the SO. Anytime that core share exceeds the 360 mdth/d maximum that excess will have to be supplied through spot purchases.

The statement that GA's deliveries will, on average, exceed core's share does not provide evidence supporting a key feature of the proposal – that core demand will be met before relying on spot purchases. As structured, the proposal does not fulfill its stated benefits. Requiring the payment of the allocated cost of core requirements in excess of the maximum restores the benefit and is more equitable.

SCGC's protest characterizes SoCalGas' expectation that the dollars charged to the SRMA account will likely be reduced as a result of lower volume of purchases by the Utility System Operator, as speculative. SCGC states that SoCalGas has offered no data to support its supposition. The protest is accurate in its statement that AL 4291 did not provide support for its expectation that charges to the SRMA account would likely be reduced. However, in response to an Energy Division request, SoCalGas provided supporting data and estimates demonstrating that had the MILC been in place during the period SCGC discusses in its protest, January 31, 2011 through February 4, 2011, charges may have been reduced significantly<sup>15</sup>. An additional analysis requested by the

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<sup>15</sup> Data and analyses were submitted under the confidentiality provisions of General Order 66C and Section 583 of the Public Utilities Code.

Energy Division shows that the MILC may have reduced charges by a similar relative amount for the period December, 2011 through April, 2011.

**It is not necessary for the agreement eventually entered into to mirror exactly the criteria set out in the RFO.** It is difficult to assess the merit of SCGC's protest that the service GA would provide under the MILC is not what was sought when the SO posted its RFO. SoCalGas did not include a copy of the RFO nor any of the other bids it received in response to the RFO when it filed AL 4291. However, we do not believe it is necessary for the agreement eventually entered into to mirror exactly the criteria set out in the RFO. Both parties may reach an agreeable protocol which, while different from the RFO, works for them and the situation.

**We are not persuaded by SCGC's argument that SoCalGas's request should be denied because it was tardy in submitting the request.** SCGC states that another reason to reject AL 4291 is that SoCalGas was tardy in submitting the MILC for approval. Offers to the RFO were due by August 1, 2011, and the advice letter seeking approval of minimum flow agreements was to be submitted by September 2, 2011. AL 4291 was filed November 3, 2011, with the MILC to take effect on December 1, 2011. Although SoCalGas does not explain why AL 4291 was filed late, we see no reason why its late filing should harm any of its customers on the Southern System, and deny this argument of SCGC. Additionally, SCGC does not explain how any customers would be harmed by the filing of AL 4291 on November 3rd, with a requested effective date nearly a month later, especially given that ample time was allowed for protests.

**We reject the proposal of SCE that customers whose gas to the Southern System is curtailed on a given day, should be excused from any SRMA costs for that day.** SCE states curtailed customers have already eliminated their own flow requirements on the Southern System. We find this proposal to be inappropriately advanced in a protest to an advice letter. The purpose of a protest is to take issue with specific aspects of the advice letter which the protestant finds unacceptable. If SCE wishes to propose a new rule for curtailment or allocation of SRMA costs, they should find another forum in which to do so.

**With regard to IP's late-filed protest, we see no reason to further investigate the reasons for the discounts.** IP states that since the discounts were offered in the middle of bidweek, rather than at the start of bidweek, most customers had made arrangements for the month of December and could not take full advantage of the discount. We agree with IP's contention that SoCalGas could have encouraged more Southern System flows if the discounts were available before bidweek started.

The discounts may have had a material impact on market prices. Since market indices are an average of bidweek prices, the drastic discount offered in the middle of bidweek may have lowered the spread between the SoCalBorder and citygate indices. SoCalGas, in its Reply to IP's protest, denies having any advance knowledge of the discounts. The fact that the MILC term was to begin service on December 1, 2011 and SoCalGas announced discounts on November 28, 2011 may be a coincidence, and may have been provided simply in order to encourage more southern system flows. The IP protest provides no actionable evidence meriting further investigation.

**D.07-12-019 granted SoCalGas's request to transfer responsibility for System reliability from the GA to the SO. Continued reliance on GA for maintaining system reliability indicates that the SO is not discharging its obligations in compliance with D.07-12-019.** As Ordering Paragraph 15 of that decision states: "**Applicants' proposal** (emphasis added) that responsibility for managing any minimum flow requirements for system reliability be transferred from the Gas Acquisition Department to the System Operator and paid for by all customers, is granted."<sup>16</sup> SoCalGas requested the transfer of Southern System responsibility from GA to the SO in A.06-08-026.

AL 4291 is SoCalGas' second attempt to assign a significant portion of the responsibility for Southern System deliveries back to GA. In AL 3976, and 3976-A, filed March 26, 2009 and June 1, 2009, respectively, SoCalGas requested approval of contracts with GA to support minimum flow requirements on the

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<sup>16</sup> D.07-12-019, Ordering Paragraph 15.

Southern System.<sup>17</sup> This first request came just 15 months after SoCalGas was allowed to transfer the Southern System responsibility. In AL 4291 the Utility states as justification for the MILC, that the SO would be “managing the Southern System by having GA assume responsibility for the flow requirements of the bundled core load.”<sup>18</sup> This seems to be a reversal to the request made in A.06-08-026 and approved in D.07-12-019. The Commission is concerned that SoCalGas sought approval for its proposal in A.06-08-026 but does not seem to have yet arrived at a realistic solution for assuring Southern System deliveries without significant reliance on GA.

**D.07-12-019 required SoCalGas to file an Annual Compliance Review (ACR) that reports on and provides a format to review purchases and sales made to maintain Southern System minimum flows.** The ACR is also an appropriate venue to present the effectiveness of the transfer of responsibility. Therefore, we will require the SO to include a review and evaluation of the transfer of responsibility for Southern System reliability from GA to the SO in its Annual Compliance Report on Utility System Operator’s Southern System Reliability Purchases and Sales.

In the review and evaluation, SoCalGas is directed to include an assessment of the steps taken since the transfer of responsibility, the cost savings resulting from the transfer of responsibility, the additional steps and timing necessary to effect the full intent of the transfer and an assessment of SO’s capability to take those steps.

**If the SO finds it necessary to continue its reliance on GA, it should file a Petition for Modification of D.07-12-019 requesting that responsibility be moved back to the GA. Alternatively, SoCalGas should meet with interested**

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<sup>17</sup> On September 10, 2009, the Commission denied the contracts filed in AL EAL 3976 and 3976-A between the SO and GA in Resolution G-3435.

<sup>18</sup> Advice Letter 4291, page 4.

**parties to arrive at an effective solution that might include GA making Southern System deliveries.**

### **Comments**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

### **FINDINGS**

1. Decision 07-12-019, Ordering Paragraph 15 granted SoCalGas' request that responsibility for managing any minimum flow requirements for system reliability be transferred from the Gas Acquisition Department to the System Operator and that System Operator costs for managing minimum flow requirements be paid for by all customers.
2. Decision 07-12-019, Ordering Paragraph 16 granted SoCalGas' request for the following System Operator tools:
  - a) The ability of the System Operator to buy and sell gas on a spot basis, as needed, to maintain system reliability.
  - b) Authority to conduct requests for offers (RFO) or open season process consistent with the System Operator needs.
  - c) Authority to submit an Advice Letter for approval of contracts that result from an RFO or open season process.
3. D.09-11-006, the SDG&E and SoCalGas BCAP Decision, approved a Settlement Agreement between most parties to the Application whereby SRMA balances were allocated across all customer classes.
4. SoCalGas filed Advice Letter 4291 on November 3, 2011.

5. SoCalGas AL 4291 was timely protested by Southern California Generation Coalition (SCGC) on November 22, 2011 and by Southern California Edison (SCE) on November 23, 2011.
6. A late-filed protest to SoCalGas AL 4291 was filed by The Indicated Producers (IP) on December 1, 2011.
7. SoCalGas submitted a timely Reply to the protests of SCGC and SCE on December 2, 2011 and to the late-filed protest of IP on December 8, 2011.
8. The MILC does not violate D.09-11-006.
9. The MILC should help SoCalGas improve southern system reliability.
10. Without modification, the MILC does not conform to its stated purpose of meeting core demand with core assets and fails to fully provide the intended benefits justifying its fee.
11. The non-performance provision of the MILC requires modification making GA responsible for a proportional share of cost when it fails to make required deliveries on days when SRMA net costs are incurred.
12. The MILC must be modified to require that when core demand exceeds the maximums delivery levels, core customers will be responsible for their allocated share of charges for the excess, on days when SRMA net costs are incurred.
13. SoCalGas AL 4291 and its request for Commission approval of the MILC between the System Operator and Gas Acquisition should be approved subject to modification.
14. The SoCalGas SO continues to request assistance from GA to manage Southern System Reliability. It appears that it has not effectively addressed the full transfer of responsibility from GA to SO as it requested in A.06-08-026 and approved in D.07-12-019.
15. The SO must evaluate its effectiveness in managing Southern System Reliability, take the necessary steps to assume all of that responsibility, or file a Petition to Modify D.07-12-019.
16. Any future MILC which looks to GA for assistance in managing minimum flows should be denied pending the outcome of SO's evaluation of the transfer of responsibility of Southern System reliability from GA.



**THEREFORE IT IS ORDERED THAT:**

1. The request of Southern California Gas Company to approve a Memorandum in Lieu of Contract between two entities of SoCalGas, the System Operator and Gas Acquisition, as requested in Advice Letter 4291 is approved subject to modification.
2. The non-performance provision must be modified making GA responsible for a proportionate allocation of charges to the System Reliability Memorandum Account whenever it fails to meet its delivery requirements on days when System Reliability Memorandum Account net costs are incurred.
3. The MILC must be modified to require that GA pay its proportional share, i.e. 41.9%, of costs associated with core demand that exceeds the daily maximums of 360 thousand decatherms (December through March) and 260 thousand decatherms. (April through October).
4. The SoCalGas System Operator shall evaluate the effectiveness of the transfer of responsibility for Southern System Reliability to it from Gas Acquisition and report on its evaluation in its next Annual Compliance Report.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on July 12, 2012; the following Commissioners voting favorably thereon:

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Paul Clanon  
Executive Director